

2005 DRAFTING REQUEST

Bill

Received: **11/10/2004**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters: **gmalaise**

Subject: **Criminal Law - drugs**

Extra Copies: **cmh**

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

1st offense possession of marijuana

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 11/17/2004 gmalaise 11/18/2004 mdsida 01/13/2005 gmalaise 01/14/2005	kfollett 11/22/2004 kfollett 01/18/2005	jfrantze 11/23/2004		lnorthro 11/23/2004 mbarman 01/04/2005		S&L Crime
/1			jfrantze		lnorthro	lemery	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			01/19/2005	_____	01/19/2005	03/10/2005	
				_____	Inorthro		
				_____	01/19/2005		

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/?	mdsida	kfollett	jfrantze	_____	lnorthro		S&L
	11/17/2004	11/22/2004	11/23/2004	_____	11/23/2004		Crime
	gmalaise	kfollett		_____	mbarman		
	11/18/2004	01/18/2005		_____	01/04/2005		
	mdsida			_____			
	01/13/2005			_____			
	gmalaise			_____			
	01/14/2005			_____			
/1			jfrantze	_____	lnorthro		

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01/19/2005	_____						

01/19/2005							
Inorthro							
01/19/2005							

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By/Representing: **himself**

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May Contact:

Addl. Drafters: **gmalaise**

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Extra Copies: **rlr, cmh**

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/?	mdsida	kfollett	jfrantze	_____	lnorthro		
	11/17/2004	11/22/2004	11/23/2004	_____	11/23/2004		
	gmalaise			_____			
	11/18/2004			_____			

FE Sent For:

LRB-0741

11/23/2004 11:46:19 AM

Page 2

<END>

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May Contact:

Addl. Drafters: GMM

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1/?	mdsida	1/11/22	1/11/22	1/11/23			

FE Sent For:

<END>

1st off pen.

forfeiture ≤ 25 g

\$1000 forfeiture

Treat 2d offence as current 1st of
3d as 2d



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0741/?
MGD&GMM:K...
jff

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Mon 11/29

Gen

1 AN ACT ...; relating to: possession of marijuana and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Insert 1-2
2
SECTION 1. 961.01 (4t) of the statutes is created to read:

3 961.01 (4t) "Controlled substance crime" means a felony or misdemeanor
4 committed under this chapter or under any statute of the United States or of any
5 state relating to controlled substances, controlled substance analogs, narcotic drugs,
6 marijuana, or depressant, stimulant, or hallucinogenic drugs.

7 SECTION 2. 961.01 (20m) of the statutes is created to read:

8 961.01 (20m) "Second or subsequent controlled substance crime" means a
9 controlled substance crime if, prior to the offender's conviction for the crime, the
10 offender has at any time been convicted of another controlled substance crime.

1 **SECTION 3,** 961.41 (3g) (c) of the statutes is amended to read:

2 961.41 (3g) (c) *Cocaine and cocaine base.* If a person ~~possess~~ possesses or
3 attempts to possess cocaine or cocaine base, or a controlled substance analog of
4 cocaine or cocaine base, the person shall be fined not more than \$5,000 and may be
5 imprisoned for not more than one year in the county jail upon a first conviction and
6 is guilty of a Class I felony ~~for~~ if the offense is a 2nd or subsequent offense. ~~For~~
7 ~~purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,~~
8 ~~prior to the offender's conviction of the offense, the offender has at any time been~~
9 ~~convicted of any felony or misdemeanor under this chapter or under any statute of~~
10 ~~the United States or of any state relating to controlled substances, controlled~~
11 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
12 ~~hallucinogenic drugs~~ controlled substance crime.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995
a. 448 ss. 243 to 266, 487 to 490; State, 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327.

13 **SECTION 4,** 961.41 (3g) (d) of the statutes is amended to read:

14 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person
15 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
16 amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance
17 analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,
18 psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned
19 for not more than one year in the county jail or both upon a first conviction and is
20 guilty of a Class I felony ~~for~~ if the offense is a 2nd or subsequent offense. ~~For purposes~~
21 ~~of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the~~
22 ~~offender's conviction of the offense, the offender has at any time been convicted of any~~
23 ~~felony or misdemeanor under this chapter or under any statute of the United States~~
24 ~~or of any state relating to controlled substances, controlled substance analogs,~~

~~narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs~~
controlled substance crime.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327.

SECTION 5. 961.41 (3g) (e) of the statutes is renumbered 961.41 (3g) (e) (intro.)

and amended to read:

961.41 (3g) (e) (intro.) If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be penalized as follows:

2. If subd. 1. does not apply and the offense is not a 2nd or subsequent controlled substance crime, the person may be fined not more than \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and.

3. If subd. 1. does not apply and the offense is a 2nd or subsequent controlled substance crime, the person is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327.

SECTION 6. 961.41 (3g) (e) 1. of the statutes is created to read:

961.41 (3g) (e) 1. If the person possesses or attempts to possess 25 grams or less of tetrahydrocannabinols included under s. 961.14 (4) (t), or 25 grams or less of a controlled substance analog of tetrahydrocannabinols, the person may be required to forfeit not more than \$1,000. This subdivision does not apply if the person violates

subdivision

- ① this ~~paragraph~~ after having been found to have committed a violation punishable
2 under this subdivision or after having been convicted of a 2nd or subsequent
3 controlled substance crime.

4 SECTION 7. 961.475 of the statutes is amended to read:

5 **961.475 Treatment option.** Whenever any person pleads guilty to or is found
6 guilty of possession or attempted possession of a controlled substance or controlled
7 substance analog under s. 961.41 (3g), the court may, upon request of the person and
8 with the consent of a treatment facility with special inpatient or outpatient programs
9 for the treatment of drug dependent persons, allow the person to enter the treatment
10 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
11 be for the period the treatment facility feels is necessary and required, but shall not
12 exceed the maximum sentence allowable unless the person consents to the continued
13 treatment. At the end of the necessary and required treatment, with the consent of
14 the court, the person may be released from sentence. If treatment efforts are
15 ineffective or the person ceases to cooperate with treatment rehabilitation efforts,
16 the person may be remanded to the court for completion of sentencing. This section
17 does not apply to an offense punishable under s. 961.41 (3g) (e) 1.

History: 1971 c. 219, 336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 448 s. 287; Stats. 1995 s. 961.475.

18 SECTION 8. 961.48 (1) (intro.) of the statutes is amended to read:

19 961.48 (1) (intro.) If a person is charged under sub. (2m) with a felony offense
20 under this chapter that is a 2nd or subsequent ~~offense as provided under sub. (3)~~
21 controlled substance crime and the person is convicted of that ~~2nd or subsequent~~
22 offense, the maximum term of imprisonment for the offense may be increased as
23 follows:

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109; 2003 a. 40.

24 SECTION 9. 961.48 (2m) (a) of the statutes is amended to read:

1 961.48 (2m) (a) Whenever a person charged with a felony offense under this
2 chapter may be subject to a conviction for a 2nd or subsequent ~~offense~~ controlled
3 substance crime, he or she is not subject to an enhanced penalty under sub. (1) unless
4 any applicable prior convictions are alleged in the complaint, indictment or
5 information or in an amended complaint, indictment or information that is filed
6 under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for
7 an offense if an allegation of applicable prior convictions is withdrawn by an
8 amended complaint filed under par. (b) 2.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109; 2003 a. 49.

9 ~~SECTION 10.~~ 961.48 (2m) (b) 1. of the statutes is amended to read:

10 961.48 (2m) (b) 1. Charges an offense as a 2nd or subsequent ~~offense~~ controlled
11 substance crime under this chapter by alleging any applicable prior convictions.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109; 2003 a. 49.

12 ~~SECTION 11.~~ 961.48 (2m) (b) 2. of the statutes is amended to read:

13 961.48 (2m) (b) 2. Withdraws the charging of an offense as a 2nd or subsequent
14 ~~offense~~ controlled substance crime under this chapter by withdrawing an allegation
15 of applicable prior convictions.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109; 2003 a. 49.

16 ~~SECTION 12.~~ 961.48 (3) of the statutes is repealed.

17 ~~SECTION 13.~~ 961.495 of the statutes is amended to read:

18 **961.495 Possession or attempted possession of a controlled substance**
19 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or
20 attempting to possess a controlled substance included in schedule I or II, a controlled
21 substance analog of a controlled substance included in schedule I or II or ketamine
22 or flunitrazepam while in or on the premises of a scattered-site public housing
23 project, while in or on or otherwise within 1,000 feet of a state, county, city, village

1 or town park, a jail or correctional facility, a multiunit public housing project, a
2 swimming pool open to members of the public, a youth center or a community center,
3 while in or on or otherwise within 1,000 feet of any private or public school premises
4 or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01
5 (56), the court shall, in addition to any other penalties that may apply to the crime,
6 impose 100 hours of community service work for a public agency or a nonprofit
7 charitable organization. The court shall ensure that the defendant is provided a
8 written statement of the terms of the community service order and that the
9 community service order is monitored. Any organization or agency acting in good
10 faith to which a defendant is assigned pursuant to an order under this section has
11 immunity from any civil liability in excess of \$25,000 for acts or omissions by or
12 impacting on the defendant. This section does not apply to an offense punishable
13 under s. 961.41 (3g) (e) 1.

History: 1989 a. 31, 121; 1991 a. 39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995 s. 961.495; 1999 a. 57.

14 **SECTION 14, Initial applicability.**

15 (1) The ~~treatment~~ ^{renumbering and amendment} of section 961.41 (3g) (e) of the statutes first applies to
16 offenses committed on the effective date of this subsection.

17 (END)

and the creation of
section 961.41 (3g)
(e) 1. of the
statutes
apply

② D- Note -

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0741/P1insgm
GMM.....

(INSERT 1-2)

✓
SECTION 1. 938.17 (2) (c) of the statutes is amended to read:

938.17 (2) (c) The citation procedures described in ch. 800 shall govern proceedings involving juveniles in municipal court, except that this chapter shall govern the taking and holding of a juvenile in custody and par. (cg) shall govern the issuing of a summons to the juvenile's parent, guardian, or legal custodian. When a juvenile is before the court assigned to exercise jurisdiction under this chapter and ch. 48 upon a citation alleging the juvenile to have violated a civil law or municipal ordinance, the procedures specified in s. 938.237 shall apply. If a citation is issued to a juvenile, the issuing agency shall notify the juvenile's parent, guardian, and legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 938.24 for informational purposes only. ✓

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16.

SECTION 2. 938.17 (2) (d) of the statutes is amended to read:

938.17 (2) (d) If a municipal court finds that the juvenile violated a municipal ordinance other than an ordinance enacted under s. 118.163 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails to pay the forfeiture imposed by the municipal court, the court may not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined

in s. 340.01 (40), for not more than 2 years. If a court suspends a license or privilege under this section, the court shall immediately take possession of the applicable license and forward it to the department that issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall thereupon return the license to the person.

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16. ✓

SECTION 3. 938.17 (2) (e) of the statutes is amended to read:

938.17 (2) (e) If a municipal court finds that a juvenile violated a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter a dispositional order under s. 938.344 that is authorized under par. (cm).

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16. ✓

SECTION 4. 938.34 (14r) (a) of the statutes is amended to read:

938.34 (14r) (a) In addition to any other dispositions imposed under this section, if the juvenile is ~~found to have violated~~ adjudicated delinquent on the basis of a violation of ch. 961, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the notice of suspension clearly stating that the suspension or revocation is for a violation of ch. 961.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321. ✓

SECTION 5. 938.34 (14s) (a) (intro.) of the statutes is amended to read:

938.34 (14s) (a) (intro.) In addition to any other dispositions imposed under this section, if the juvenile is ~~found to have violated~~ adjudicated delinquent on the

basis of a violation of s. 961.41 (3g), the court shall order one of the following penalties:

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321.

SECTION 6. 938.344 (2e) (am) of the statutes is created to read:

938.344 (2e) (am) If a court finds a juvenile committed a violation under s. 961.41 (3g) (e) 1. or a local ordinance that strictly conforms to that statute, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years and, in addition, shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than \$50 or the juvenile's participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than \$100 or the juvenile's participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than \$500 or the juvenile's participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

SECTION 7. 938.344 (2e) (b) of the statutes is amended to read:

938.344 (2e) (b) Whenever a court suspends a juvenile's operating privilege under this subsection, the court shall immediately take possession of any suspended license and forward it to the department of transportation, together with the notice of suspension clearly stating that the suspension is for a violation under s. 961.41

(3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes.

History: 1995 a. 77, 448; 1997 a. 84; 1999 a. 9 s. 3263; 1999 a. 109; 2001 a. 16.

SECTION 8. 938.344 (3) of the statutes is amended to read:

938.344 (3) If the juvenile alleged to have committed the violation is within 3 months of his or her 17th birthday, the court assigned to exercise jurisdiction under this chapter and ch. 48 may, at the request of the district attorney or on its own motion, dismiss the citation without prejudice and refer the matter to the district attorney for prosecution under s. 125.07 (4). The juvenile is entitled to a hearing only on the issue of his or her age. This subsection does not apply to violations under s. 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

History: 1995 a. 77, 448; 1997 a. 84; 1999 a. 9 s. 3263; 1999 a. 109; 2001 a. 16.

(END OF INSERT)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

PI
LRB-0741/?dn
MGD&GMM: J.C. Jf

Date

Rep.-elect Kessler:

Under this bill, a first offense violation of the prohibition on the possession of marijuana is treated as a civil offense if the amount involved is 25 grams or less. A second marijuana offense is penalized in the same way as a first offense is under current law (*i.e.*, as a misdemeanor), regardless of the amount involved, and a third or subsequent offense is a Class I felony. I was unsure, however, about how to treat possession of 25 grams or less of marijuana if the offender has prior misdemeanor or felony offenses involving marijuana or other drugs. For now, the bill provides that possession of 25 grams or less of marijuana remains a civil offense even if the person has one prior misdemeanor or felony drug conviction. If the person has two or more prior misdemeanor or felony drug convictions, the possession offense becomes a felony. Please let me know if that is consistent with your intent.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

insert GMM's d-note here
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0741/P1dngm

GMM.11.11.11

Datt



Representative Kessler:

You have requested a separate draft to amend the Juvenile Justice Code to provide for a forfeiture for a juvenile who possesses less than 25 grams of marijuana. After further review, however, s. 938.34 (14s) already provides for a \$50 forfeiture for a first drug possession violation, a \$100 forfeiture for a second drug possession violation, and a \$500 forfeiture for a third drug possession violation, with the option of staying the forfeiture and ordering the juvenile to submit to an assessment and participate in an education or treatment program. Accordingly, no separate draft is necessary to amend the Juvenile Justice Code to provide for such a forfeiture because that code already provides for it.

This draft, however, decriminalizes a first violation for possessing 25 grams or less of marijuana, that is, a first violation is no longer a crime, but rather a civil law violation. As such, s. 938.34 (14s), which is a delinquency disposition, would no longer apply. Accordingly, this draft creates s. 938.344 (2e) (am) to provide for a civil law violation disposition for possessing 25 grams or less of marijuana.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0741/P1dn
MGD&GMM:kjf:jf

November 23, 2004

Rep.-elect Kessler:

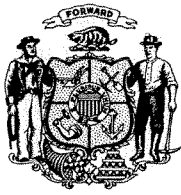
Under this bill, a first offense violation of the prohibition on the possession of marijuana is treated as a civil offense if the amount involved is 25 grams or less. A second marijuana offense is penalized in the same way as a first offense is under current law (*i.e.*, as a misdemeanor), regardless of the amount involved, and a third or subsequent offense is a Class I felony. I was unsure, however, about how to treat possession of 25 grams or less of marijuana if the offender has prior misdemeanor or felony offenses involving marijuana or other drugs. For now, the bill provides that possession of 25 grams or less of marijuana remains a civil offense even if the person has one prior misdemeanor or felony drug conviction. If the person has two or more prior misdemeanor or felony drug convictions, the possession offense becomes a felony. Please let me know if that is consistent with your intent.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

You have requested a separate draft to amend the Juvenile Justice Code to provide for a forfeiture for a juvenile who possesses less than 25 grams of marijuana. After further review, however, s. 938.34 (14s) already provides for a \$50 forfeiture for a first drug possession violation, a \$100 forfeiture for a second drug possession violation, and a \$500 forfeiture for a third drug possession violation, with the option of staying the forfeiture and ordering the juvenile to submit to an assessment and participate in an education or treatment program. Accordingly, no separate draft is necessary to amend the Juvenile Justice Code to provide for such a forfeiture because that code already provides for it.

This draft, however, decriminalizes a first violation for possessing 25 grams or less of marijuana, that is, a first violation is no longer a crime, but rather a civil law violation. As such, s. 938.34 (14s), which is a delinquency disposition, would no longer apply. Accordingly, this draft creates s. 938.344 (2e) (am) to provide for a civil law violation disposition for possessing 25 grams or less of marijuana.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0741/P1
MGD&GMM:kjff

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1/19

Regen

1 **AN ACT** *to repeal* 961.48 (3); *to renumber and amend* 961.41 (3g) (e); *to amend*
2 938.17 (2) (c), 938.17 (2) (d), 938.17 (2) (e), 938.34 (14r) (a), 938.34 (14s) (a)
3 (intro.), 938.344 (2e) (b), 938.344 (3), 961.41 (3g) (c), 961.41 (3g) (d), 961.475,
4 961.48 (1) (intro.), 961.48 (2m) (a), 961.48 (2m) (b) 1., 961.48 (2m) (b) 2. and
5 961.495; and **to create** 938.344 (2e) (am), 961.01 (4t), 961.01 (20m) and 961.41
6 (3g) (e) 1. of the statutes; **relating to:** possession of marijuana and providing
7 a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 **SECTION 1.** 938.17 (2) (c) of the statutes is amended to read:
9 938.17 (2) (c) The citation procedures described in ch. 800 shall govern
10 proceedings involving juveniles in municipal court, except that this chapter shall

~~or for a violation to which s. 961.41 (3g) (e) 1.~~
~~or an ordinance conforming to that statute applies~~

1 govern the taking and holding of a juvenile in custody and par. (cg) shall govern the
2 issuing of a summons to the juvenile's parent, guardian, or legal custodian. When
3 a juvenile is before the court assigned to exercise jurisdiction under this chapter and
4 ch. 48 upon a citation alleging the juvenile to have violated a civil law or municipal
5 ordinance, the procedures specified in s. 938.237 shall apply. If a citation is issued
6 to a juvenile, the issuing agency shall notify the juvenile's parent, guardian, and
7 legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12
8 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2),
9 ~~961.41 (3g) (e) 1.~~ 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming
10 to one of those statutes, shall send a copy to an intake worker under s. 938.24 for
11 informational purposes only.

12 **SECTION 2.** 938.17 (2) (d) of the statutes is amended to read:

13 938.17 (2) (d) If a municipal court finds that the juvenile violated a municipal
14 ordinance other than an ordinance enacted under s. 118.163 or an ordinance that
15 conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41 (3g) (e) 1.,
16 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional
17 orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile
18 fails to pay the forfeiture imposed by the municipal court, the court may not impose
19 a jail sentence but may suspend any license issued under ch. 29 for not less than 30
20 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined
21 in s. 340.01 (40), for not more than 2 years. If a court suspends a license or privilege
22 under this section, the court shall immediately take possession of the applicable
23 license and forward it to the department that issued the license, together with the
24 notice of suspension clearly stating that the suspension is for failure to pay a
25 forfeiture imposed by the court. If the forfeiture is paid during the period of

1 suspension, the court shall immediately notify the department, which shall
2 thereupon return the license to the person.

3 **SECTION 3.** 938.17 (2) (e) of the statutes is amended to read:

4 938.17 (2) (e) If a municipal court finds that a juvenile violated a municipal
5 ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.41
6 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter a dispositional
7 order under s. 938.344 that is authorized under par. (cm).

8 **SECTION 4.** 938.34 (14r) (a) of the statutes is amended to read:

9 938.34 (14r) (a) In addition to any other dispositions imposed under this
10 section, if the juvenile is ~~found to have violated~~ adjudicated delinquent on the basis
11 of a violation of ch. 961, the court shall suspend the juvenile's operating privilege, as
12 defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court
13 shall immediately take possession of any suspended license and forward it to the
14 department of transportation together with the notice of suspension clearly stating
15 that the suspension or revocation is for a violation of ch. 961.

16 **SECTION 5.** 938.34 (14s) (a) (intro.) of the statutes is amended to read:

17 938.34 (14s) (a) (intro.) In addition to any other dispositions imposed under
18 this section, if the juvenile is ~~found to have violated~~ adjudicated delinquent on the
19 basis of a violation of s. 961.41 (3g), the court shall order one of the following
20 penalties:

21 **SECTION 6.** 938.344 (2e) (am) of the statutes is created to read:

22 938.344 (2e) (am) If a court finds a juvenile committed a violation under s.
23 961.41 (3g) (e) 1. or a local ordinance that strictly conforms to that statute, the court
24 shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not

Insert 4-5

1) less than 6 months nor more than 5 years and, in addition, shall order one of the
2) ~~following penalties:~~

3) ~~1. For a first violation, a forfeiture of not more than \$50 or the juvenile's~~
4 participation in a supervised work program or other community service work under
5) s. 938.34 (5g) or both.

6 ~~2. For a violation committed within 12 months of a previous violation, a~~
7 forfeiture of not more than \$100 or the juvenile's participation in a supervised work
8 program or other community service work under s. 938.34 (5g) or both.

9 ~~3. For a violation committed within 12 months of 2 or more previous violations,~~
10 a forfeiture of not more than \$500 or the juvenile's participation in a supervised work
11 program or other community service work under s. 938.34 (5g) or both.

12 SECTION 7. 938.344 (2e) (b) of the statutes is amended to read:

13 938.344 (2e) (b) Whenever a court suspends a juvenile's operating privilege
14 under this subsection, the court shall immediately take possession of any suspended
15 license and forward it to the department of transportation, together with the notice
16 of suspension clearly stating that the suspension is for a violation under s. 961.41
17 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2), or a local ordinance that strictly
18 conforms to one of those statutes.

19 SECTION 8. 938.344 (3) of the statutes is amended to read:

20 938.344 (3) If the juvenile alleged to have committed the violation is within 3
21 months of his or her 17th birthday, the court assigned to exercise jurisdiction under
22 this chapter and ch. 48 may, at the request of the district attorney or on its own
23 motion, dismiss the citation without prejudice and refer the matter to the district
24 attorney for prosecution under s. 125.07 (4). The juvenile is entitled to a hearing only
25 on the issue of his or her age. This subsection does not apply to violations under s.

1 961.41 (3g) (e) 1., 961.573 (2), 961.574 (2), or 961.575 (2) or a local ordinance that
2 strictly conforms to one of those statutes.

3 **SECTION 9.** 961.01 (4t) of the statutes is created to read:

4 961.01 (4t) "Controlled substance crime" means a felony or misdemeanor
5 committed under this chapter or under any statute of the United States or of any
6 state relating to controlled substances, controlled substance analogs, narcotic drugs,
7 marijuana, or depressant, stimulant, or hallucinogenic drugs.

8 **SECTION 10.** 961.01 (20m) of the statutes is created to read:

9 961.01 (20m) "Second or subsequent controlled substance crime" means a
10 controlled substance crime if, prior to the offender's conviction for the crime, the
11 offender has at any time been convicted of another controlled substance crime.

12 **SECTION 11.** 961.41 (3g) (c) of the statutes is amended to read:

13 961.41 (3g) (c) *Cocaine and cocaine base.* If a person possess possesses or
14 attempts to possess cocaine or cocaine base, or a controlled substance analog of
15 cocaine or cocaine base, the person shall be fined not more than \$5,000 and may be
16 imprisoned for not more than one year in the county jail upon a first conviction and
17 is guilty of a Class I felony ~~for~~ if the offense is a 2nd or subsequent offense. ~~For~~
18 ~~purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,~~
19 ~~prior to the offender's conviction of the offense, the offender has at any time been~~
20 ~~convicted of any felony or misdemeanor under this chapter or under any statute of~~
21 ~~the United States or of any state relating to controlled substances, controlled~~
22 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
23 ~~hallucinogenic drugs~~ controlled substance crime.

24 **SECTION 12.** 961.41 (3g) (d) of the statutes is amended to read:

1 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person
2 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
3 amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance
4 analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,
5 psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned
6 for not more than one year in the county jail or both upon a first conviction and is
7 guilty of a Class I felony ~~for if the offense is a 2nd or subsequent offense. For purposes~~
8 ~~of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the~~
9 ~~offender's conviction of the offense, the offender has at any time been convicted of any~~
10 ~~felony or misdemeanor under this chapter or under any statute of the United States~~
11 ~~or of any state relating to controlled substances, controlled substance analogs,~~
12 ~~narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs~~
13 controlled substance crime.

14 **SECTION 13.** 961.41 (3g) (e) of the statutes is renumbered 961.41 (3g) (e) (intro.)
15 and amended to read:

16 961.41 (3g) (e) (intro.) If a person possesses or attempts to possess
17 tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance
18 analog of tetrahydrocannabinols, the person may be penalized as follows:

19 2. If subd. 1. does not apply and the offense is not a 2nd or subsequent controlled
20 substance crime, the person may be fined not more than \$1,000 or imprisoned for not
21 more than 6 months or both ~~upon a first conviction and.~~

22 3. If subd. 1. does not apply and the offense is a 2nd or subsequent controlled
23 substance crime, the person is guilty of a Class I felony ~~for a 2nd or subsequent~~
24 ~~offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent~~
25 ~~offense if, prior to the offender's conviction of the offense, the offender has at any time~~

1 ~~been convicted of any felony or misdemeanor under this chapter or under any statute~~
2 ~~of the United States or of any state relating to controlled substances, controlled~~
3 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
4 ~~hallucinogenic drugs.~~

5 **SECTION 14.** 961.41 (3g) (e) 1. of the statutes is created to read:

6 961.41 (3g) (e) 1. If the person possesses or attempts to possess 25 grams or less
7 of tetrahydrocannabinols included under s. 961.14 (4) (t), or 25 grams or less of a
8 controlled substance analog of tetrahydrocannabinols, the person may be required
9 to forfeit not more than \$1,000. This subdivision does not apply if the person violates
10 this subdivision after having been found to have committed a violation punishable
11 under this subdivision *or* after having been convicted of a 2nd or subsequent
12 controlled substance crime. *, or after having been convicted of any felony*

13 **SECTION 15.** 961.475 of the statutes is amended to read:

14 **961.475 Treatment option.** Whenever any person pleads guilty to or is found
15 guilty of possession or attempted possession of a controlled substance or controlled
16 substance analog under s. 961.41 (3g), the court may, upon request of the person and
17 with the consent of a treatment facility with special inpatient or outpatient programs
18 for the treatment of drug dependent persons, allow the person to enter the treatment
19 programs voluntarily for purposes of treatment and rehabilitation. Treatment shall
20 be for the period the treatment facility feels is necessary and required, but shall not
21 exceed the maximum sentence allowable unless the person consents to the continued
22 treatment. At the end of the necessary and required treatment, with the consent of
23 the court, the person may be released from sentence. If treatment efforts are
24 ineffective or the person ceases to cooperate with treatment rehabilitation efforts,

1 the person may be remanded to the court for completion of sentencing. This section
2 does not apply to an offense punishable under s. 961.41 (3g) (e) 1.

3 **SECTION 16.** 961.48 (1) (intro.) of the statutes is amended to read:

4 961.48 (1) (intro.) If a person is charged under sub. (2m) with a felony offense
5 under this chapter that is a 2nd or subsequent ~~offense as provided under sub. (3)~~
6 controlled substance crime and the person is convicted of that ~~2nd or subsequent~~
7 offense, the maximum term of imprisonment for the offense may be increased as
8 follows:

9 **SECTION 17.** 961.48 (2m) (a) of the statutes is amended to read:

10 961.48 (2m) (a) Whenever a person charged with a felony offense under this
11 chapter may be subject to a conviction for a 2nd or subsequent ~~offense~~ controlled
12 substance crime, he or she is not subject to an enhanced penalty under sub. (1) unless
13 any applicable prior convictions are alleged in the complaint, indictment or
14 information or in an amended complaint, indictment or information that is filed
15 under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for
16 an offense if an allegation of applicable prior convictions is withdrawn by an
17 amended complaint filed under par. (b) 2.

18 **SECTION 18.** 961.48 (2m) (b) 1. of the statutes is amended to read:

19 961.48 (2m) (b) 1. Charges an offense as a 2nd or subsequent ~~offense~~ controlled
20 substance crime under this chapter by alleging any applicable prior convictions.

21 **SECTION 19.** 961.48 (2m) (b) 2. of the statutes is amended to read:

22 961.48 (2m) (b) 2. Withdraws the charging of an offense as a 2nd or subsequent
23 ~~offense~~ controlled substance crime under this chapter by withdrawing an allegation
24 of applicable prior convictions.

25 **SECTION 20.** 961.48 (3) of the statutes is repealed.

1 **SECTION 21.** 961.495 of the statutes is amended to read:

2 **961.495 Possession or attempted possession of a controlled substance**
3 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or
4 attempting to possess a controlled substance included in schedule I or II, a controlled
5 substance analog of a controlled substance included in schedule I or II or ketamine
6 or flunitrazepam while in or on the premises of a scattered-site public housing
7 project, while in or on or otherwise within 1,000 feet of a state, county, city, village
8 or town park, a jail or correctional facility, a multiunit public housing project, a
9 swimming pool open to members of the public, a youth center or a community center,
10 while in or on or otherwise within 1,000 feet of any private or public school premises
11 or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01
12 (56), the court shall, in addition to any other penalties that may apply to the crime,
13 impose 100 hours of community service work for a public agency or a nonprofit
14 charitable organization. The court shall ensure that the defendant is provided a
15 written statement of the terms of the community service order and that the
16 community service order is monitored. Any organization or agency acting in good
17 faith to which a defendant is assigned pursuant to an order under this section has
18 immunity from any civil liability in excess of \$25,000 for acts or omissions by or
19 impacting on the defendant. This section does not apply to an offense punishable
20 under s. 961.41 (3g) (e) 1.

21 **SECTION 22. Initial applicability.**

22 (1) The renumbering and amendment of section 961.41 (3g) (e) of the statutes
23 and the creation of section 961.41 (3g) (e) 1. of the statutes first apply to offenses
24 committed on the effective date of this subsection.

25 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0741/lins
MGD:.....

analysis INSERT

Current law prohibits the possession or attempted possession of marijuana (tetrahydrocannabinol). In general, a person who violates this prohibition is guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months or both. But if the person is convicted of possessing or attempting to possess marijuana after having been convicted of any other controlled substance crime, the person is guilty of a Class I felony. He or she may then be fined of up to \$10,000 or sentenced to a term of imprisonment of up to three and a half years (which, if the sentence is for more than one year, includes a term of confinement and a term of extended supervision) or both. More severe penalties apply if the person is convicted of possessing or attempting to possess marijuana with intent to manufacture, distribute, or deliver it.

Current law also authorizes counties and municipalities to enact ordinances prohibiting the possession of 25 grams or less of marijuana. A violation of such an ordinance is a civil offense punishable by a forfeiture (a civil fine). The ordinance, however, cannot be used to prosecute a person who has previously been convicted of possessing marijuana.

This bill converts certain possession-of-marijuana offenses under state law from misdemeanors into civil offenses. Under the bill, if a person possesses or attempts to possess 25 grams or less of marijuana, the person may be required to forfeit not more than \$1,000. Existing criminal penalties, however, still apply if: 1) the person has previously been found to have committed a civil possession-of-marijuana offense under state law; 2) the person has previously been convicted of a separate controlled substance crime; or 3) the person has previously been convicted of a felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

Insert A

Similarly, for juveniles, the bill converts possession of
an
or an attempt to possess 25 grams or less of marijuana
from a
from a delinquent act into a civil law violation, which
suspension
is punishable by suspension of the juvenile's
operating privilege for not less than six months nor
more than five years and by a forfeiture of not more
than \$50 or the juvenile's participation in a supervised

work program community service work or both. Existing
delinquency dispositions, however, still apply if the
juvenile has previously been found to have committed a
or of
possessed or attempted to possess 25 grams or less of
convicted of or
marijuana, been convicted of or adjudicated delinquent
crime
for a separate controlled substance crime, or been
of or for
convicted of or adjudicated delinquent for a felony.

(edit insert)

Inset 4-5

No#

This paragraph does not apply, if ~~the~~ the juvenile violates
or a local ordinance that strictly conforms to that statute

s. 961.41 (3g) (e) 1. After having been found to have

committed a violation punishable under this paragraph,

after having been convicted ^{or} adjudicated delinquent for
2nd or

a 2nd or subsequent controlled substance crime, as

defined in s. 961.01 (20m), or after having been

convicted ^{or} adjudicated delinquent for any felony.
punished counts

A violation punished under this paragraph counts as a

violation for purposes of s. 938.34 (14s) (a).

(col inset)

Emery, Lynn

From: Little, Sharon
Sent: Thursday, March 10, 2005 9:19 AM
To: LRB.Legal
Subject: Draft review: LRB 05-0741/1 Topic: 1st offense possession of marijuana

It has been requested by <Little, Sharon> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0741/1 Topic: 1st offense possession of marijuana